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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,902	09/25/2003	Karen M. Braun	A2227-US-NP	6024

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BASCH & NICKERSON LLP
1777 PENFIELD ROAD
PENFIELD, NY 14526

EXAMINER

DHINGRA, PAWANDEEP

ART UNIT	PAPER NUMBER
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2625

NOTIFICATION DATE	DELIVERY MODE
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04/21/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/670,902	Applicant(s) BRAUN, KAREN M.	
	Examiner PAWANDEEP S. DHINGRA	Art Unit 2625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-3 and 5-17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/David K Moore/
Supervisory Patent Examiner, Art Unit 2625

/P. D./
Examiner, Art Unit 2625

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 1/27/2009 have been fully considered but they are not persuasive.

Firstly, applicant argues that examiner recognizes that Newman fails to disclose selecting a best metamer pair match from said metamer pairs, which estimates a viewing illumination; entering an indicator of a estimated viewing illumination; and adjusting the characterization data to correspond to a estimated viewing illumination.

In reply, examiner clearly disagrees. Examiner never admitted that above argued limitations are not taught by Newman, plus, office action on pages 4-5 clearly indicates above limitations being disclosed by Newman. Thus, applicant's arguments are not valid.

Applicant further argues that Yamamoto fails to teach viewing the target under the illumination for which characterization is desired.

In reply, examiner asserts that as admitted by applicant that Yamamoto teaches in S3 of figure 8 that spectral reflectance of each printed gray color patch (S2) is measured under the illumination (light source - D50 and A). Firstly, in order to measure the spectral reflectance of the patch, the patch has to be sensed / viewed either by a machine or person such that the reflectance of the patch can be measured. Examiner notes that claim does not mention explicitly that it has to be a user, who views the target.

Secondly, in paragraph 66, Yamamoto clearly teaches during calculating color difference, observing (viewing) each color patch (target) under the illumination (light source - D50 and A), for which characterization is desired. Yamamoto again teaches in paragraph 66 that tristimulus values are calculated based on the observation under the illumination (D50 and A) for which characterization is desired (see S2-S4 in figure 8 with corresponding text, note that ambient illumination at the location where the printer's output is intended to be viewed consists of light sources D50 and A).

Applicant further argues that Yamamoto fails to teach selecting a best metamer pair match from said metamer pairs, which estimates said viewing illumination.

In reply, examiner asserts that best metamer pair match (patches with certain ΔE) is selected based on calculated color difference ΔE . Color difference estimates the observing (viewing) of the color patches (target) under the illumination (light source - D50 and A) (see figure 8; paragraphs 60-73). Note that tristimulus values are calculated based on the observation of the gray color patches under the illumination (D50 and A) for which characterization is desired and color difference ΔE , is calculated based on the calculated tristimulus values. Thus, ΔE represents the viewing illumination. The patches are selected among other patches based on ΔE , which estimates the viewing illumination.

Thus, Yamamoto clearly teaches viewing the target under the illumination for which characterization is desired. And both Newman and Yamamoto successfully teach selecting a best metamer pair match from said metamer pairs, which estimates said viewing illumination as argued by the applicant.